



JUN 20 2014

Dr. Harry Lee Williams  
President  
Delaware State University  
1200 North Dupont Highway  
Dover, DE 19901-2277

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Dear Dr. Williams:

This letter is to inform you that the U.S. Department of Education (Department) intends to fine Delaware State University (DSU/the University) a total of \$55,000 based on the violations of statutory and regulatory requirements outlined below. This fine action is taken in accordance with the procedures that the Secretary of Education (Secretary) has established for assessing fines against institutions participating in any or all of the programs authorized under Title IV of the Higher Education Act of 1965, as amended, 20 U.S.C. § 1070 *et seq.* (Title IV, HEA programs). As applicable here, under the Department's regulations, the Department may impose a fine of up to \$27,500 for each violation. 34 C.F.R. § 668.84. As detailed below, this fine action is based on DSU's failure to comply with the requirements of the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the Clery Act) in Section 485(f) of the HEA, 20 U.S.C. § 1092(f), and the Department's regulations in 34 C.F.R. §§ 668.41 and 668.46.

Under the Clery Act, institutions participating in the Title IV, HEA programs must prepare, publish and distribute an Annual Security Report (ASR) by October 1 of each year. 34 C.F.R. § 668.41(e). The ASR must include a description of the institution's campus security policies in specific areas. 34 C.F.R. § 668.46(b). In addition, the ASR must report statistics for the three most recent calendar years concerning the occurrence of certain crimes on campus, in or on certain non-campus buildings or property, and on public property. 34 C.F.R. § 668.46(c). An institution must compile and publish crime statistics for each separate campus. 34 C.F.R. § 668.46(d). The crimes that must be reported include: criminal homicide (murder and manslaughter); sex offenses (forcible and non-forcible); robbery; aggravated assault; burglary; motor vehicle theft; arson; and arrests for liquor law violations, drug law violations and illegal weapons possession. The ASR must be distributed to current students and employees and must be made available to applicants for admission and employment to provide them with accurate, complete and timely information about crime and safety on campus. 34 C.F.R. § 668.41(e). Institutions must submit the crime statistics annually to the Department, which makes them publicly available. 34 C.F.R. § 668.41(e)(5).

**Federal Student Aid**

An OFFICE of the U.S. DEPARTMENT of EDUCATION

Administrative Actions and Appeals Service Group  
830 First St., N.E. Washington, D.C. 20002-8019  
StudentAid.gov

The Department conducted a focused campus security program review at DSU from August 4, 2008 to August 14, 2008, and from December 1, 2008 to December 4, 2008. The focus of the review was DSU's compliance with the Clery Act. The Department reviewed police incident reports and Judicial Affairs disciplinary records provided by DSU for the 2004, 2005, 2006, 2007, and 2008 calendar years.

The review consisted of an examination of the DSU police incident reports, arrest records, disciplinary files, and policies and procedures related to the Clery Act which were provided by the institution to the reviewers. The review team also interviewed DSU staff members.

On November 2, 2010, the Department issued a Program Review Report to DSU. The review found that DSU had not complied with the Clery Act and with the Department's regulations. DSU responded to the report on January 31, 2011. After reviewing DSU's response, the Department issued its Final Program Review Determination (FPRD) letter to DSU on January 25, 2012. The FPRD is incorporated by reference into this fine notice. (Enclosure 1).

The Department is taking this fine action based on the findings in the FPRD, which concluded that during the period of the review, DSU lacked the administrative capability to fulfill the requirements of the Title IV, HEA programs in accordance with the Department's regulations. Additionally, DSU failed to maintain or provide documentation to the Department to support the crime statistics published in its ASR and submitted to the Department's Campus Crime and Security Website for calendar years 2004, 2005, 2006, and 2007.

#### **LACK OF ADMINISTRATIVE CAPABILITY**

To begin and to continue to participate in any Title IV, HEA program, an institution must demonstrate to the Secretary that it is capable of adequately administering the programs under each of the standards established by the Department's regulations. The Secretary considers an institution to have administrative capability if it administers the Title IV, HEA programs in accordance with all applicable statutory and regulatory provisions and all applicable special arrangements, agreements, and limitations entered into under the authority of statutes applicable to Title IV of the HEA. 34 C.F.R. § 668.16. The standards also include a requirement that an institution must employ an adequate number of qualified staff to administer the Title IV, HEA programs. 34 C.F.R. § 668.16(b)(2). An institution is required to administer the programs with appropriate checks and balances in its system of internal controls. 34 C.F.R. § 668.16(c)(1). These standards apply to all aspects of the Clery Act and the Department's implementing regulations at 34 C.F.R. § 668.46.

Under the Clery Act and the Department's regulations, an institution participating in the Title IV, HEA programs must keep records relating to its administration of those programs for three years after the end of the award year for which aid was disbursed. 34 C.F.R. § 668.24(e).

DSU did not provide the Department with documentation to support its reported crime statistics. In particular, DSU failed to provide all of the crime or disciplinary incident/violation reports for the period covered by the review. In response to the Program Review Report, DSU claimed that 100% of the Incident/Violation Reports that resided in the Judicial Affairs offices were copied and provided to the Department, and that no reports during the review period of 2004-2008 were omitted from this production. DSU did provide the Department with documentation from the school's office of Judicial Affairs, but at no time has DSU provided the Department with documentation from the Department of Housing and Resident Life and Student Affairs, which also have authority to receive and maintain records of crime or incident reports. Therefore, DSU did not meet its obligations under the regulations.

The Department has made multiple requests to DSU for all documentation related to conduct, incidents, or events which may be reportable under the Clery Act. The Department requested information during the course of the review, in personal interviews and in electronic correspondence. However, the University has failed to provide all of the documents and information needed for the Department to complete its review. For the last two years, the Department has been informed by DSU officials that no additional information was available despite numerous repeated requests for information.

The Department requested documents and information from DSU at the following times:

- During the on-site review August 4 to 14, 2008 and a return on-site visit for documents December 1 to 4, 2008.
- December 3, 2008, email to Paula Duffy, Assistant Director Student Affairs. This e-mail attached a detailed letter that specifically requested DSU to provide, among other things, all incident reports to the campus police/student housing/judicial affairs; and notes/warnings/citations, and referrals from counselling offices/faculty/employees for calendar years 2004, 2005, 2006, 2007 and 2008. The letter required DSU to submit the requested information by December 12, 2008.
- December 16, 2008, email sent to DSU official, Dr. Paul Bryant specifically requesting copies of documents from Residence Staff, and Judicial Affairs Hearings.
- December 16, 2008, email sent to DSU official, Ron Williams, requesting information.
- December 19, 2008, email sent to DSU official, Ron Williams, requesting DSU to submit information starting from calendar year 2007. This e-mail was in response to Mr. Williams' Memo (undated), to the Department in which he stated that he was unable to provide information for calendar years 2004, 2005, 2006 and 2006 because all infraction reports had been shredded.

- November 24, 2009, email sent to DSU officials, Dr. Smith, Chief Overton, Dr. Paul Bryant, and Ms. Paula Duffy, requesting information. This e-mail attached a detailed letter that specifically requested DSU to provide, among other things, all incident reports to the campus police/student housing/judicial affairs; and notes/warnings/citations, and referrals from counselling offices/faculty/employees for calendar years 2004, 2005, 2006, 2007 and 2008. The letter required DSU to submit the requested information by December 31, 2009.
- December 12, 2009, at the request of Chief Overton, the Department met with DSU officials to discuss the information request. Chief Overton indicates that DSU has conducted an investigation into the missing documentation and informs the Department that no additional information is available. DSU was advised that the Department will move forward with the program review report based on the information presented to date.
- Throughout the 2010 calendar year, several conference calls were made to DSU officials to discuss the information request for FSA program reviews. The last conference call was on December 21, 2010. This call served as the Department's final request to DSU for the information necessary to complete the Department's review.

Despite these numerous requests, DSU failed to provide to the Department completed incident/violation reports and referrals from the residence halls for calendar years 2004, 2005, 2006, and 2007. The University had ample opportunity to respond to the Department's continued requests for this documentation but failed to do so.

In the program review report, DSU was required to develop and implement a comprehensive system of policies and procedures to ensure that staff members are trained, and information is properly documented and retained for ASR reporting. DSU's January 31 2011 response failed to demonstrate that DSU had developed a system of policies and procedures to ensure that staff members are trained; and that required information is properly documented and retained for ASR reporting. The University's January 31, 2011 response only discussed the hiring of a new employee and the implementation of a Judicial Affairs Management System. The University failed to present any information or documentation demonstrating that it has taken steps to improve the training of staff members, and the reporting and record retention process for all campus security authorities.

DSU's failure to provide the Department with completed incident/violation reports and referrals from the residence halls for calendar years 2004, 2005, 2006, and 2007 made it impossible for the Department to audit and verify DSU's compliance with the Clery Act and the Department's regulations. These violations were numerous and systemic and reflect a lack of administrative capability.

**FAILURE TO REPORT ACCURATE CRIME STATISTICS AND PROVIDE DOCUMENTATION AND RECORDS TO SUBSTANTIATE CRIME STATISTICS REPORTED TO THE DEPARTMENT AND INCLUDED IN THE ASR**

Under the Clery Act and the Department's regulations, institutions participating in the Title IV, HEA programs must make available statistical information related to certain reported crimes and arrest/campus disciplinary referrals for alcohol, drug and illegal weapons possession violations. The statistical information must be disclosed by location – on campus (dormitories vs. residential facilities), in or on non-campus buildings or property, and on public property – and must be provided for the three most recent calendar years. C.F.R §§ 668.46(a), 668.46(c)(1) – (c)(4).

The statistical reporting must be disclosed and made available as part of the institution's ASR by October 1 of each year, and it must be electronically submitted to the Department for its inclusion in the Campus Crime and Security Website. The Department has established timeframes within which institutions must electronically submit information. C.F.R § 668.41(e)(1)-(e)(5).

Under the Clery Act and the Department's regulations, an institution participating in the Title IV, HEA programs must keep records relating to its administration of the Title IV, HEA programs for three years after the end of the award year for which aid was disbursed. 34 C.F.R. § 668.24(e).

DSU failed to provide documentation to the Department to support the crime statistics for calendar years 2004, 2005, 2006 and 2007 provided in the ASR and reported to the Department. In the absence of supporting documentation, the Department cannot confirm the accuracy of the crime statistics DSU reported to its students, employees, and the Department. As part of its response, DSU was required to provide documentation that the statistics were correct. DSU did not comply with this requirement.

DSU did provide records from the University Police Department and the Office of Judicial Affairs but documentation from other campus security authorities was non-existent. Specifically, documents such as residence hall journals, resident staff incident notes, warnings and citations issued by campus security authorities (Residence Staff, Faculty, Professional Staff, counseling offices, other university employees) were not provided. DSU concedes that primary documents were not submitted to the Department in connection with the Program Review Report, and believes that this was caused by the Director of Housing and Residential Education (DHRE) incorrectly reporting that the records were destroyed. However, DSU has never come forth with the documentation it claims it has, and which the Department needed to complete the review.

DSU's failure to maintain and produce records to support the crime statistics in its ASR and to the Department means that it cannot demonstrate that its reports are accurate, which is a violation of its obligations under the Clery Act.

In determining the amount of fine, the Department considers both the gravity of the offense and the size of the institution. 34 C.F.R. § 668.92. Pursuant to the Secretary's decision In the Matter of Bnai Arugath Habosem, Docket No. 92-131-ST (August 24, 1993), the size of an institution is based on whether it is above or below the median funding levels for the Title IV, HEA programs in which it participates. The latest year for which complete funding data is available for DSU is 2012-2013 award year. According to the Department records, DSU received approximately \$8,874,550 in Federal Pell Grant (Pell) funds, \$37,822,560 in Federal Direct Loan funds and \$345,580 in Campus-Based funds. The latest information available to the Department indicates that the median funding level for institutions participating in the Federal Pell Grant program is \$1,583,853, for institutions participating in the Federal Direct Loan programs, the median funding level is \$3,105,978, and for institutions participating in the Campus-Based programs, the median funding level is \$275,987. Accordingly, DSU is a large institution because its funding levels for Federal Pell Grant, Federal Direct Loan, and Campus-Based funds exceeds the median funding levels for those Title IV, HEA programs.

As detailed in this letter, the Clery Act violations identified at DSU are very serious and numerous. These failures made it impossible for the Department to verify DSU's crime statistics provided to the campus community and the public for calendar years 2004, 2005, 2006, and 2007. Further, the failures endangered DSU's students and employees who must be able to rely on the accurate reporting and disclosure of campus crime statistics to take precautions for their safety. Moreover, the Department considers an institution's compliance with the Clery Act requirements to be essential part of the administrative capability needed to participate in the Title IV HEA programs, and DSU's failure to comply with those requirements constitutes an inability to administer properly the Title IV programs.

In determining the appropriate fine amounts in this case, FSA is also taking into account the Secretary's decisions in In the Matter of Tarleton State University, Dkt. No. 09-56-SF (Dec. of the Secretary and Order of Remand, June 1, 2012), In the Matter of Washington State University, Dkt. No. 11-56-SF (Dec. of the Secretary and Order of Remand, Aug. 29, 2012) and In the Matter of Virginia Polytechnic Institute and State University, Dkt. No. 11-30-SF (Dec. of the Secretary and Order of Remand, Aug. 30, 2012 and Dec. of the Secretary, Jan. 3, 2014).

After considering the gravity of the violations and size of the institution, I have assessed a fine of \$27,500 for DSU's lack of administrative capability. This is a serious violation because an institution must demonstrate to the Secretary that it is capable of adequately administering Title IV, HEA programs. The failure by DSU to provide documents requested by the Department made it impossible for the Department to verify the accuracy of the crime statistics reported by DSU. DSU's failure to provide the Department with documents required to substantiate crime

Dr. Harry Lee Williams  
Delaware State University

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statistics it reported in its ASRs and the Department's Campus Crime and Security Website for calendar years 2004, 2005, 2006, and 2007 is a violation of the requirement that it must have the administrative capability to participate in the Title IV programs. Current and prospective students/employees must be able to rely on accurate and complete campus crime information. A maximum fine is appropriate in this case.

I have also assessed a fine of \$27,500 for DSU's failure to report accurate crime statistics. This is a serious violation because the Department was unable to verify the crime statistics reported in DSU's ASRs and to the Department's Campus Crime and Security Website for calendar years 2004, 2005, 2006, and 2007. Current and prospective students and employees cannot be expected to rely on statistical data when that data cannot be verified by the Department. A maximum fine is appropriate in this case.

The fine of \$55,000 will be imposed on **July 10, 2014**, unless I receive, by that date, a request for a hearing or written material indicating why the fine should not be imposed. DSU may submit both a written request for a hearing and written material indicating why a fine should not be imposed. If DSU chooses to request a hearing or submit written material, you must write to me at:

Administrative Actions and Appeals Service Group  
U.S. Department of Education  
Federal Student Aid/Program Compliance  
830 First Street, NE – UCP-3, Room 84F2  
Washington, DC 20002-8019

Upon receipt of such a request, the case will be referred to the Office of Hearings and Appeals, which is a separate entity within the Department. That office will arrange for assignment of DSU's case to a hearing official who will conduct an independent hearing. DSU is entitled to be represented by counsel at the hearing and otherwise during the proceedings. If DSU does not request a hearing but submits written material instead, I will consider that material and notify DSU of the amount of fine, if any, that will be imposed.

**ANY REQUEST FOR A HEARING OR WRITTEN MATERIAL THAT DSU SUBMITS MUST BE RECEIVED BY JULY 10, 2014; OTHERWISE, THE \$55,000 FINE WILL BE EFFECTIVE ON THAT DATE.**

Dr. Harry Lee Williams  
Delaware State University

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If you have any questions or desire any additional explanation of DSU's rights with respect to this action, please contact Lawrence Mwethuku of my staff at 202/377-3684.

Sincerely,



Mary E. Gust, Director  
Administrative Actions and Appeals Service Group  
Federal Student Aid/Program Compliance  
U.S. Department of Education

Enclosure

cc: Dr. Elizabeth H. Sibolski, Middle States Commission on Higher Education, via [info@msche.org](mailto:info@msche.org)  
Mr. Patrick J Dunn, Delaware Department of Education, via [Pat.dunn@doe.ed.us](mailto:Pat.dunn@doe.ed.us)